

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
September 17, 2015**

A meeting of the Louisville Metro Planning Commission was held on September 17, 2015 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Commission members present:

David Proffitt, Vice Chairman
Jeff Brown
*David Tomes
Marilyn Lewis
Rob Peterson
Vince Jarboe
Clifford Turner
Robert Kirchdorfer

Commission members absent:

Donnie Blake, Chairman
Chip White

Staff Members present:

Emily Liu, Director, Planning and Design Services
Joseph Reverman, Planning Manager
Brian Davis, Planning Supervisor
Steve Hendrix, Planning Supervisor
David B. Wagner, Planner II
John G. Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Pamela M. Brashear, Management Assistant
Chris Cestaro, Management Assistant (minutes)

*Commissioner Tomes arrived at approximately 1:05 – Voting on Consent Agenda.

The following matters were considered:

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APPROVAL OF MINUTES

SEPTEMBER 3, 2015 PLANNING COMMISSION REGULAR MEETING MINUTES

On a motion by Commissioner Turner, seconded by Commissioner Jarboe, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on September 3, 2015.

The vote was as follows:

YES: Commissioners Brown, Jarboe, Kirchdorfer, Lewis, Peterson, Proffitt and Turner.

NO: No one

NOT PRESENT: Commissioners Blake, Tomes and White

ABSTAINING: No one

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CONSENT AGENDA

CASE NO. 13STREETS1007

Request: Partial street closure of Woodlawn Avenue, Nevada Avenue, Park Boulevard, Crittenden Drive, Hiawatha Avenue, Orange Drive, and Rose Drive

Project Name: Louisville Regional Airport Authority Street Closures

Location: Multiple Locations

Owner: Louisville Metro Government

Applicant: Louisville Regional Airport Authority
C.T. Miller, Executive Director
P.O. Box 9129
Louisville, Ky. 40209

Representative: Stites & Harbison, PLLC
Greg Erhard
400 West Market Street, Suite 1800
Louisville, Ky. 40202

Jurisdiction: Louisville Metro

Council District: 15 – Marianne Butler
21 – Dan Johnson

Case Manager: **David B. Wagner – Planner II**

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Discussion

00:04:53 There was no presentation or discussion.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

00:05:03 On a motion by Commissioner Tomes, seconded by Commissioner Brown, the following resolution was adopted.

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CONSENT AGENDA

CASE NO. 13STREETS1007

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Partial street closure of Woodlawn Avenue, Nevada Avenue, Park Boulevard, Crittenden Drive, Hiawatha Avenue, Orange Drive, and Rose Drive.

The vote was as follows:

YES: Commissioners Brown, Jarboe, Kirchdorfer, Lewis, Peterson, Proffitt and Turner.

NO: No one

NOT PRESENT: Commissioners Blake, Tomes, and White

ABSTAINING: No one

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BUSINESS SESSION

CASE NO. 15SUBDIV1003

Project Name: St. Joseph Orphanage Site
Location: 13605 and 13615 Factory Lane

Case Manager: **Brian Davis, Planning Supervisor**

NOTE: This case is on the Docket ONLY to schedule a requested night hearing.

Agency Testimony:

00:06:03 Brian Davis explained that a petition has been received requesting a night hearing in the district. He reviewed some of the dates available for a hearing at the East Government Center, and the Commissioners discussed which dates they would be available.

Names and addresses of speakers:

William Bardenwerper (applicant's representative), Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway 2nd floor, Louisville, KY 40223

Judith Teller, 14647 Cressington Circle, Louisville, KY 40245

Karen Bertocci, 3806 Cressington Place, Louisville, KY 40245

Testimony of speakers:

00:10:00 William Bardenwerper, the applicant's representative, discussed dates and times.

00:11:33 Judith Teller, representing the Factory Lane Development Awareness Group LLC, said the dates proposed do not work for her group.

00:12:54 Karen Bertocci (sp) said that the Factory Lane Development Awareness Group LLC is in the process of obtaining a new legal counsel, and they need time to review the plans which they said they just received yesterday evening. She also requested that this case be brought before a sub-committee (LD&T or DRC) before it comes before the Planning Commission.

00:14:17 Ms. Bertocci said she has received contradictory information from staff and the website. Commissioner Proffitt, Joseph Reverman (Planning Manager with Metro Planning and Design Services) and Jonathan Baker (Legal Counsel for the Planning Commission) explained review procedures for subdivisions. Mr. Baker added that subdivisions are approved or denied at the LD&T level; this case came before the

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BUSINESS SESSION

CASE NO. 15SUBDIV1003

Planning Commission as a courtesy because there was some controversy. A Planning Commission night hearing is over and above legal requirements for this case.

00:21:56 Mr. Bardenwerper said that a neighborhood meeting was held on March 17, 2015 and no calls or any communication was received from any neighbors about this case. He added that, by statute, subdivisions are supposed to be acted upon 90 days after application. He said the waiver request will be withdrawn.

00:23:04 Ms. Teller discussed her experiences with the website and communications with staff.

00:28:57 Commissioner Tomes explained that the Planning Commission does not have discretion to deny what is purely a subdivision of land. He said a hearing might bring the expectation that the Planning Commission has some discretionary ability in this case. John Carroll, legal Counsel for the Planning Commission, also asked why an evening hearing should be held on what is a ministerial decision. The issue was discussed by the Commissioners, Mr. Baker, Mr. Carroll, Ms. Teller, and Ms. Bertocci.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

00:40:32 On a motion by Commissioner Tomes, seconded by Commissioner Jarboe, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby schedule Case No. 15SUBDIV1003 to be heard on **October 22, 2015 at 6:30 p.m.** at the East Government Center.

The vote was as follows:

YES: Commissioners Lewis, Brown, Kirchdorfer, Turner, Peterson, Jarboe, Tomes, and Proffitt.

NO: No one

NOT PRESENT: Commissioners Blake and White.

ABSTAINING: No one

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PUBLIC HEARING

CASE NO. 15ZONE1030

Request: Change in zoning from R-4 to R-6 on 13.20 acres with land development code waivers and detailed district development plan

Project Name: Aiken Road Multi-Family

Location: 12202, 12204, 12206 and 12212 Aiken Road

Owners:

D & J Rental Inc.
David Abbott, Representative
13115 Aiken Road
Louisville, KY 40223

Gary and Sherrian DeWitt
12212 Aiken Road
Louisville, KY 40223

Charles and Beverly Servino
12206 Aiken Road
Louisville, KY 40223

Gary W. Bozarth
12202 Aiken Road
Louisville, KY 40223

Applicant: The Garrett Companies
435 East Main Street Suite 220
Greenwood, IN 46143

Representative: Bill Bardenwerper
Bardenwerper, Talbott & Roberts PLLC
1000 North Hurstbourne Parkway 2nd Floor
Louisville, KY 40223

Engineer/Designer: Kathy Linares
Mindel Scott & Associates
5151 Jefferson Boulevard
Louisville, KY 40219

Jurisdiction: Middletown

Council District: 19 – Julie Denton

Case Manager: Christopher Brown, Planner II

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PUBLIC HEARING

CASE NO. 15ZONE1030

This case has already been scheduled for a Night Hearing October 15, 2015 at 6:00 p.m. at the East Government Center.

00:42:02 Brian Davis said this case has already been scheduled for a night hearing at LD&T. No vote was needed today.

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PUBLIC HEARING

CASE NO. 14CELL1003

Request: Cell Tower
Project Name: Woodhaven Country Club
Location: 7200 Woodhaven Road (PVA address)
Louisville, Ky. 40291
Across from 7202-7206 Quail Ridge Road
Adjacent to 7215 Quail Ridge Road

Owner: Ray's Development Corporation
c/o Chance Maguire
General Manager, Woodhaven Country Club
5408 Watterson Trail, Louisville, KY 40291

Applicant: Cellco Partnership, d/b/a Verizon Wireless
Amy Harper, Contact
2421 Holloway Road
Louisville, KY 40299

Representative: David Pike, Pike Legal Group, PLLC
Attorney at Law
1578 Highway 44 East, Suite 6
P.O. Box 369
Shepherdsville, Ky. 40291

Existing Size: 106 acres, total site
26,994 square foot lease area
5,625 square foot compound area

Existing Zoning Districts: R-5A and R-4
Existing Form District: Neighborhood
Jurisdiction: Louisville Metro
Council Districts: 2 -- Barbara Shanklin
24 -- Madonna Flood

Case Manager: **Steve Hendrix, Planning Supervisor**

Notice of this public hearing appeared in The Courier Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

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CASE NO. 14CELL1003

Agency Testimony:

00:43:07 Steve Hendrix presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

00:47:53 Councilwoman Madonna Flood asked why the tower was moved 100 feet. Why can't it be moved closer to Woodhaven, instead of to the established residences?

The following spoke in favor of this request:

David Pike and Stephen Lentz, Pike Legal Group PLLC, 1578 Highway 44 East, Suite 6, P.O. Box 369, Shepherdsville, Ky. 40291

Gordon Snyder, Verizon Wireless (radio frequency engineer), 2421 Holloway Drive, Louisville, KY 40299

Lorne Belden, T-Mobile (radio frequency engineer), 11509 Commonwealth Drive, Louisville, KY 40299

Chance Maguire, 5408 Watterson Trail, Louisville, KY 40291

Marty Brown, applicant's representative, c/o Pike Legal Group, P.O. Box 369, Shepherdsville, KY 40165 (signed in but did not speak)

Marshall Slagle, applicant's representative, c/o Pike Legal Group, P.O. Box 369, Shepherdsville, KY 40165 (signed in but did not speak)

William Grigsby, applicant's representative, c/o Pike Legal Group, P.O. Box 369, Shepherdsville, KY 40165 (signed in but did not speak)

Debbie Rhodes, applicant's representative, c/o Pike Legal Group, P.O. Box 369, Shepherdsville, KY 40165 (signed in but did not speak)

Erica Besic, applicant's representative, c/o Pike Legal Group, P.O. Box 369, Shepherdsville, KY 40165 (signed in but did not speak)

Matt Brooks, applicant's representative, c/o Pike Legal Group, P.O. Box 369, Shepherdsville, KY 40165 (signed in but did not speak)

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CASE NO. 14CELL1003

Kevin Blewitt, applicant's representative, c/o Pike Legal Group, P.O. Box 369, Shepherdsville, KY 40165 (signed in but did not speak)

Summary of testimony of those in favor:

00:51:00 David Pike handed out binders of information to the Commissioners, showed a Power Point presentation, and presented the applicant's case (see recording for detailed presentation.)

01:28:31 In response to a question from Commissioner Proffitt, Mr. Pike discussed his view of the legal definition of a "substantial gap" in service.

01:31:24 In response to further questions from Commissioner Proffitt, Gordon Snyder and Lorne Belden (radio frequency engineers for Verizon and T-Mobile, respectively) explained the "substantial gap" issue in much more detail.

01:36:49 In response to a question from Commissioner Proffitt, Mr. Pike discussed the tower location and the site topography in more detail. He added that Chance Maguire might be the only person able to discuss why Woodhaven Country Club was only willing to lease two areas of its site.

01:41:28 Mr. McGuire said the golf course might be expanded or the property might be developed or sold in the future; that's why they can only build the tower in those 2 areas. The closer it gets to the club, the less the property value gets and there is less property to develop. Commissioner Proffitt reminded him that Mr. Pike said it doesn't lower property values. Mr. Maguire and Commissioner Jarboe discussed why the footprint of the tower can't be integrated into the golf course.

The following spoke in opposition to this request:

Dr. Ward Mowery, 7215 Quali Ridge Road, Louisville, KY 40291

Summary of testimony of those in opposition:

01:47:17 Dr. Ward Mowery, an adjacent property owner, said he wished he had had access few weeks ago to the information being presented today so that his attorney could have looked at it. He said electrical construction began before any hearings were held. He asked how far the tower, containment area/fenced areas, etc. will be from his property line. He said this project is a disguised "fundraising project" for the Woodhaven Country Club. He said the tower is in line with his bedroom window, and any health ramifications of the towers is unknown.

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02:00:00 Commissioner Proffitt and Commissioner Kirchdorfer asked Dr. Mowery to clarify some of the statements he made during his presentation.

Rebuttal

02:07:53 Mr. Pike objected that third parties were not present for cross-examination; also about allegations of health ramifications. He said there was no expert testimony today, only lay. Aesthetics can't be considered today. Woodhaven can lease what they want to lease. He said the proposal meets or exceed all requirements; also, that 90 certified letters were sent out and only one person attended today's hearing.

02:11:29 In response to a question from Commissioner Lewis, Mr. Pike discussed the proposed access road.

02:12:19 In response to a question from Commissioner Turner regarding cables, Mr. Pike gave details of the construction and cabling related to the tower. He said the applicant would agree to a binding element, if needed, stating that all ground-to-antennae cabling would be placed inside of the monopole. He also discussed the engineering of the structure itself and standards for wind resistance, seismic loading, ice loading, etc.

02:19:55 In response to a question from Commissioner Peterson, Mr. Pike discussed landscaping plans, particularly the tree cover around the base.

Deliberation

02:37:52 Commissioners' deliberation. During the deliberation, the Commissioners agreed that the **first** cell tower location, presented at the Planning Commission public hearing of **December 4, 2014**, be the one to be voted on. The reasons were because it is a shorter pole; would require less tree removal to get to the location; and would be less intrusive to the neighborhood as a whole.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

02:47:20 On a motion by Commissioner Tomes, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposed project is needed to provide wireless communications services to wireless service users in the

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subject area. The site has been designed to accommodate co-location of additional wireless service carriers, and T-Mobile USA has confirmed that it intends to co-locate its antennas on the proposed tower following construction to address a need in its wireless communications network; and

WHEREAS, the Commission further finds that the applicant states that there are no other suitable or willing co-locatable structures or structure owners identified within the vicinity to meet the coverage objectives. The applicant states they have considered the likely effects of the installation on nearby land uses and values and have concluded that there is no more suitable location reasonably available from which adequate service can be provided. The site plan shows that the proposed facility has been designed to accommodate additional wireless telecommunication carriers, thus reducing the need for additional towers in the area in the future; and

WHEREAS, the Commission further finds that the applicant has met the applicable requirements of the Comprehensive Plan and the Land Development Code with regards to the compound base. The monopole will not be lighted and signage will be minimal. The buffering will include a combination of existing vegetation, plantings and an 8 foot tall wooden privacy fence. The applicant has submitted the required information concerning the reasoning and need for this particular location; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification and the staff report that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested 135 foot monopole with a 5 foot lightning arrester for a total structure height of 140 feet, as described on the attached legal description, **ON CONDITION** that the site plan will be presented and reviewed by the Landscape Architect to assure that the plantings are appropriate and that there are evergreen plantings; and **SUBJECT** to the following binding element:

All of the cabling for the tower will be internal to the monopole.

The vote was as follows:

YES: Commissioners Lewis, Kirchdorfer, Turner, Peterson, Jarboe, and Tomes.

NO: Commissioners Brown and Proffitt.

NOT PRESENT: Commissioners Blake and White.

ABSTAINING: No one

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STANDING COMMITTEE REPORTS

Land Development and Transportation Committee

No report given.

Site Inspection Committee

No report given.

Planning Committee

No report given.

Development Review Committee

No report given.

Policy and Procedures Committee

No report given.

CHAIRPERSON/DIRECTOR'S REPORT


No report given.

ADJOURNMENT

The meeting adjourned at approximately 4:20 p.m.



Chair



Planning Director